Conservation Law Foundation

August 18, 2005

Howard Bernstein, Ph.D
RPS Program Manager
Massachusetts Division of Energy Resources
100 Cambridge Street, Suite 1020
Boston, MA 02114

Re: Further Comments in Response to July 1, 2005 Notice of Inquiry/Proposed Revisions to Biomass Regulations

Dear Mr. Bernstein:

The Conservation Law Foundation (CLF) appreciates this opportunity to submit further comments on prospective changes to the Division of Energy Resources' (Division's) Renewable Portfolio Standard (RPS) biomass regulations as contemplated in the July 1, 2005 Notice of Inquiry that was issued jointly by the Division and the Department of Environmental Protection (DEP). This is to supplement the initial comments we submitted on July 25, 2005 and at the Stakeholder Conference on July 18.

Although we support the Division's efforts to move away from the current system of case-by-case determinations with respect to qualification of biomass facilities under the RPS, we continue to have serious concerns with respect to many of the proposals outlined in the NOI. Primarily, we are concerned that (1) the RPS not be weakened by lowering the standards for older biomass facilities such that they are treated as equivalent to the new clean renewable energy sources that the statute is intended to promote; and (2) predictability and stability are critically important for fostering investment in new renewables, and any changes to the RPS regulations should foster rather than undermine these key values. In the end, we believe that the best solution for achieving the purposes of the RPS statute with respect to increasing the supply of new clean renewable generating sources is not to lower the bar for RPS-eligibility but instead to require load serving entities to procure long-term contracts for RECs (and the associated power) sufficient to meet their RPS obligations.

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Only if a pre-1998 biomass facility is completely *repowered* and updated with stringent emissions control should its output be eligible for RPS compliance.

As set forth in our earlier comments, it would be contrary to the language and intent of the RPS statute (M.G.L. c. 25A, s. 11F) if existing biomass generating sources were considered "new" simply by retooling their power conversion technology and/or upgrading their pollution controls. Among other things, this would eviscerate the "vintage waiver" provision that, in accordance with the statute, permit only the increased increment of generating capacity from such a retooled biomass facility to become RPS eligible. Accordingly, in order to become eligible for the RPS, existing biomass plants that were in operation prior to 1998 should be required to be completely re-*powered* with an advanced biomass power conversion technology and meet the RPS' "low-emissions" standard. Such re-powering must entail wholesale replacement of the prime mover, with the new capital investment constituting 80% (or more) of the total value of the plant and equipment (exclusive of its property and intangible assets).[1] With respect to meeting the low-emissions standard, the facility must be required to meet the standards set for all new biomass facilities, as discussed below. Following its re-powering and emissions control enhancements, the facility ought to be required to demonstrate to the Division that it has achieved a material increase in its efficiency as well as a material decrease in air emissions in order to be considered RPS eligible.

Since the RPS is intended to foster the development of truly *new* renewable generating sources – rather than cannibalizing the existing baseline – our support for allowing re-powered old biomass facilities to become RPS eligible is contingent on the Division making a corresponding adjustment to the overall RPS target[2] and implementing a cap on the total amount of re-powered biomass that may become RPS eligible (or discounting the RECs associated with power from these facilities). The RPS target should be increased in direct relation to the estimated generation from re-powered biomass facilities that are used for compliance with the Massachusetts RPS following adoption of a revised regulation allowing these facilities to become RPS-eligible. It would be most logical and consistent with the statute for this increase in the RPS target to occur simultaneously with the re-powered biomass facilities becoming RPS eligible. However, the increase in the RPS target could be delayed slightly (to allow for greater predictability on the part of those who are subject to RPS compliance requirements). In order to ensure that re-powered old biomass facilities do not dramatically displace new, clean renewable facilities as part of the RPS, the Division also should either place a cap on the amount of re-powered biomass that would be allowed to become RPS eligible or should discount the value of the RECs associated with these facilities (e.g., at a 2/3 discount whereby each megawatt hour of power produced from such a facility would be worth 1/3 of a REC).

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[1] This re-powering standard notably is reflected in the draft Rhode Island RES regulations.

[2] Given the Division's decision earlier this year to allow RPS eligibility for the retooled Hemphill biomass facility, which cannot be considered "new" in accordance with the statute, we urge the Department to increase the overall RPS target to account for the power generated (and RECs sold) from this facility and similarly situated facilities that have been permitted eligibility in the past, if any. As detailed herein, we do not support a standard that would allow for similar future decisions on RPS eligibility for retooled old biomass facilities, nor does the statute contemplate such a low standard for RPS eligibility.

Net heat-rate is not an appropriate means for defining "advanced biomass power conversion technology."

As was evident at the July 28 Stakeholder Conference, there is rather broad consensus that net heat-rate is not an effective means for defining standard criteria for "advanced biomass power conversion technology." In the absence of another viable quantitative standard for defining this critical element of RPS-eligible biomass power generating sources, we suggest that the Division adopt the following definition: biomass power conversion technology that uses solid biomass fuel in a fluidized bed or gasification process, or any other new advanced power conversion technology as determined by the Department on a case-by-case basis (except that stoker or pile burn power conversion technology shall not be considered "new" or "advanced"). Considering the lack of evidence that stoker combustion or pile burn technologies have evolved to the point that they could be considered "advanced," and that the RPS statute specifically *requires* "advanced" power conversion technology for a facility to be eligible, the express exclusions of these old combustion sources should be maintained.

The "Low emission" biomass standard should be defined in accordance with Best Available Control Technology.

We continue to believe that the Division ought to adopt the lowest feasible air emissions standards for biomass facilities that seek RPS eligibility. At a minimum, the criteria should be set in accordance with Table 2 in the NOI (with the addition of limits on heavy metals and HCl drawn from Table 3) for up to the next three years, and Best Available Control Technology (BACT) should be required thereafter. In order to establish the BACT standards, DEP should undertake a programmatic review of BACT periodically, for example every three years (given the evolving nature of emissions control technology), and should reissue a table of pollutant limits that would be effective at a date certain (e.g., two years later) after the review and updated standards are complete. This approach provides the predictability and business certainty that flows from providing clear emissions standards on an output based basis while preserving the "ratcheting down" of standards to provide ever greater environmental improvement that is the hallmark of BACT review.

Construction and Demolition (C&D) waste should only be considered eligible as a biomass fuel if re-use is infeasible and if it can be demonstrated that it does not pose a threat to human health or the environment.

Given that C&D waste is often contaminated with toxins associated with paint, preservatives, plastics and metals, it is not an ideal fuel for combustion in biomass facilities. CLF supports re-use of C&D waste wherever possible, as a preferable alternative to combustion. The RPS must *not* be used as a vehicle to make the combustion of contaminated C&D waste the path of least resistance for disposal of this material.

In the absence of a program for aggressively recycling C&D waste, we support the designation of C&D waste as an acceptable fuel for RPS-eligible biomass facilities, subject to certain protections. Importantly, the C&D waste must be comprised of clean wood, and the facility using C&D waste as fuel must be subject to stringent air emissions limitations. Given the practical difficulties associated with

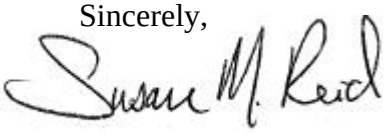
ensuring a clean fuel stream derived from C&D waste, it is particularly important to ensure that emissions control devices are employed to prevent C&D contaminants such as lead and other heavy metals from being emitted by biomass facilities.

Response to other comments.

Most of the comments presented by other stakeholders have focused on the issues set forth above. We note that Dominion Resources Services, Inc. (Dominion) introduced several new ideas that are outside the scope of the NOI and should not be embraced by the Division. For example, Dominion's suggestion that facilities co-fired with eligible biomass fuels should be deemed to meet the "low emission" criteria so long as they are in compliance with 310 CMR 7.29 is wholly off the mark. Considering that the limits set forth in 310 CMR 7.29 are directed toward fossil-fuel burning facilities, and that new or retrofitted pulverized *coal* facilities are capable of meeting those limits, the same standards can not rationally be seen as meeting the "low emission" test for biomass eligibility under the RPS statute . Moreover, Dominion's request to expand RPS biomass fuel eligibility to *all* waste streams, including natural oil byproducts, is contrary to the language and intent of the statute and should be rejected.

Thank you for the opportunity to provide these additional comments.

Sincerely,



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